

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15837 of George Washington University, as amended, pursuant to 11 DCMR 3108.1 and 3107.2, for a special exception under Section 210 for further processing of an approved campus plan, or, in the alternative, special exceptions under Sections 210 and 411 for further processing of an approved campus plan and a roof structure, and a variance from the lot occupancy requirements (Subsection 403.2) to allow an addition to an existing University building containing a student center, offices, theater, dining room and dormitory in an R-5-D District at premises 800 21st Street, and 2100 Eye Street, N.W. (Square 77, Lots 5, 7 and 58).

HEARING DATES: July 21, 1993; September 22, 1993; January 12, 1994
and January 26, 1994

DECISION DATE: March 2, 1994 and April 6, 1994

ORDER

PROCEDURAL HISTORY: At the request of both Advisory Neighborhood Commission (ANC) 2A and the applicant, the public hearing scheduled for July 21, 1993 was postponed and rescheduled to September 22, 1993 to allow further discussion between the two groups. At this hearing, the relief requested was for a special exception pursuant to Section 210 of the Zoning Regulations. The hearing scheduled for September 22, 1993 was also postponed at the applicant's request and the Board granted permission to readvertise the case in conformance with the issues raised by the ANC. The ANC claimed that the advertisement for the case was deficient in that it did not include either special exception relief for the roof structure pursuant to Section 411, or variance relief for lot occupancy. The applicant tendered the determination of the Zoning Administrator as proof that their original advertisement was proper. Nevertheless, to protect the record, the applicant agreed to readvertising the case.

The hearing was readvertised for January 12, 1994, however, since proper notice of the alternative variance and special exception relief published in the D.C. Register (required by Section 3317.3) was deficient by seven days, the hearing was continued to January 26, 1994. At the hearing, ANC 2A raised a further procedural issue, claiming that additional variance relief was required from the prohibition on additions to nonconforming structures, and that this variance relief was not advertised. Applicant offered proof

of BZA approval of the 85.5 percent lot occupancy in Application 9314-9315 issued in 1967 to show that the structure is not a nonconforming structure. At its March 2, 1994 public meeting, the Board deferred its decision on the application in order to receive, inter alia, advice from the Office of Corporation Counsel regarding whether this case should be decided on the basis of the original relief requested, or in the alternative, and whether this was a nonconforming structure requiring additional variance relief. Corporation counsel issued a report stating that the second advertisement, requesting relief in the forms of two special exceptions and a variance was the proper procedure by which the BZA is to process this application. Corporation Counsel further concluded that this structure was not a nonconforming structure, and therefore did not require additional relief.

SUMMARY OF EVIDENCE:

1. The subject site is located in Square 77 in the center of the George Washington University campus, an area designated in the campus plan for educational/mixed-use buildings. It is surrounded on three sides by University-owned property. Across 21st Street to the east of the site is a faculty parking lot and commercial property owned by the University known as "Red Lion Row." University-owned commercial property is also located across I Street, N.W., to the north. To the south of the subject site is the University's Lisner Auditorium and Gelman Library. To the west of the subject site in Square 77 on H Street is Crawford Hall, a George Washington University dormitory. On I Street, N.W., the Marvin Center abuts the privately-owned West End Apartment Building.

2. Square 77 is located in the R-5-D zone district which permits a building height of 90 feet and a lot occupancy coverage of 75 percent. The 1910 Height Act limits the building height on the subject site to 80 feet. The maximum floor area ratio for buildings in the R-5-D District is 3.5. However, pursuant to the GWU Campus Plan approved by the Board of Zoning Adjustment, the University is permitted a 3.5 aggregate FAR for all its campus buildings.

3. The site of the subject property on Lots 57 and 58 has been subdivided into one new record known as Lot 60. The site is improved with the Marvin Center at 800 21st Street, N.W., (former Lot 58) and Adams Hall at 2100 I Street, N.W. (former Lot 57).

4. The five-story Marvin Center serves as the University student center, and includes offices, a theater, a bookstore, dining halls, meeting space and recreational facilities. It contains approximately 219,653 square feet of gross floor area. The building is located on the west side of 21st Street, N.W., with additional street frontage on H Street to the south and on I Street

to the north. A 30-foot alley abuts the rear of the building in the center of the square. The entrance to the building is currently set back approximately 90 feet in a court yard on 21st Street. A second entrance is located on H Street, N.W., with fire exits from the theater on I Street.

5. George Washington University proposes to renovate and expand the existing Marvin Center by constructing three additions to the building. New construction within the court yard at the south elevation will provide an entrance lobby into the food court directly from H Street. This new entrance lobby will be two stories in height, and will provide a terrace at the third floor level, off the reception room. On 21st Street, a new two-story entrance lobby, with a full height interior atrium, will be created in the present courtyard by constructing new exterior walls at the building line. There will be small lounges and meeting areas at the third through fifth floors, above the entrance lobby and around the atrium. At I Street, two floors will be added above the theater (including double height space at the third level) to increase the height of the I Street elevation from two stories to five stories. Additional meeting and student activity space will be provided in the two-story addition above the existing theater. The additions will not increase the overall height of the building. Finally, the addition of a small canopy connection between the Marvin Center and Adams Hall to provide covered access will render the two buildings as one for zoning purposes, thus bringing Adams Hall into the overall calculations.

6. The improvements are part of an overall renovation of the Marvin Center. Retail, food and student services on the ground floor and student activity and recreational areas on the upper floors will be upgraded and modernized. Administrative offices serving the needs of the student body at the fourth floor will also be renovated.

SPECIAL EXCEPTION UNDER SECTION 210

7. The University previously filed and received approval for a long range plan for developing the campus as a whole (the 1985-2000 Campus Plan) in BZA Order 14455, as amended. The subject site is located in an area shown on the approved Land Use Map in "The George Washington University Campus Plan for the Year 1985 through the Year 2000" as being designated for "Educational Mixed Use." "Educational Mixed Use" is defined as classrooms, laboratories, libraries, student activity facilities, faculty offices, parking, parks and open space, and related support functions.

8. Pursuant to the George Washington University Campus Plan approved in BZA Order 14455, dated February 25, 1988, and as amended with conditions on June 29, 1988, the Board had set forth certain additional requirements for further processing of specific buildings within the George Washington University Campus Plan area

which must be met. The applicant contended that it complied with and met the requirements contained in BZA Order 14455.

9. The applicant offered evidence to the effect that the proposed additions are not likely to become objectionable to neighboring properties because of noise, traffic, or the number of students.

10. By memorandum dated September 15, 1993, and by testimony at the public hearing, the Office of Planning recommended approval of the application, indicating that the applicant had met the burden of proof under Section 210 of the Zoning Regulations.

11. The D.C. Department of Public Works, by report dated July 16, 1993, reported no objection to the application under Section 210 of the Zoning Regulations.

SPECIAL EXCEPTION UNDER SECTION 410

12. In 1968, at the time of the original BZA approval for the Marvin Center, the roof structure zoning regulations for mechanical equipment, stairway and elevator penthouses differed from the current regulations in at least two relevant respects. First, under former Section 3308.2, all roof structures were required to be reviewed by the Board of Zoning Adjustment. Secondly, under former Section 3201.26, the penthouse setback requirement only applied above the building height limit.

13. The permitted height limit in the R-5-C District in 1968 was 90 feet. Based upon the width of the adjacent streets, and the terms of the 1910 Height Act, the building height limit on the subject site is 80 feet. The building height was originally approved at 70.36 feet from the measuring point at the curb to the high point of the roof.

14. Although the penthouse was reviewed and approved by the BZA in Order No. 9314-9315, no penthouse setbacks were required for the project at that time. However, setbacks were provided from the H street, I Street and 21st Street sides of the lot.

15. The new I Street stairwells are fire stairs required by the Building Code, and are continuations of the existing stairwells which currently extend from the ground floor to the second floor of that portion of the building. The stairwells will be located adjacent to the exterior walls, congruent with the existing stairs. The western stairwell currently extends above the roof of the theater (third floor level), and is adjacent to the exterior wall. The existing eastern stairwell does not extend to the roof, as there is currently a second means of egress connecting the roof terrace directly to the third floor elevator lobby. However, the present roof terrace is not handicapped-accessible.

16. The roof above the theater currently contains protrusions to accommodate the smoke exhaust cowls for the loft above the stage. There is also a stair tower at the southern edge which continues up two levels beyond the existing roof of the theater. These existing roof structures, plus the existing western stair tower described above, do not meet the current roof structure setback regulations. They will all be removed as part of the new construction.

17. The portion of the handicapped elevator penthouse which does not meet the strict setback requirements is recessed in an interior portion of the lot, at least 60 feet from the nearest lot line, although it is adjacent to an exterior wall. This is intended to provide access to the roof in the most efficient and nonobtrusive way possible.

18. The applicant contends that the placement of the mechanical housing, the elevator penthouses, and the stair towers as proposed will not have an adverse impact on light and air, and will maximize the amount of available rooftop passive recreation space (and provided shadow studies as evidence of this contention).

19. The applicant testified that full compliance is impractical because of operating difficulties, size of the building lot, and other conditions relating to the building that would tend to make full compliance unduly restrictive, prohibitively costly and unreasonable.

20. The University testified that it will take every precaution to ensure that the project will not create any objectionable conditions. The building design will enhance the exterior visual appearance of the building and will improve the overall quality of the streetscape. Existing projections into the streetscape will be removed as part of this project.

VARIANCE RELIEF UNDER SUBSECTION 403.2

21. The evidence of record indicates that the Marvin Center was constructed in 1968, pursuant to BZA Appeal No. 9314-9315. The building was built on former Record Lot 58 with a BZA-approved lot occupancy of 85.8 percent, which is above the matter of right limitation of 75 percent in the R-5-C (now R-5-D) zone (Subsection 403.2). Adams Hall, the residence building on former Record Lot 57, was built in 1925 with a lot occupancy of 68.4 percent. The combination of the two record lots into Record Lot 60 results in a combined lot occupancy of 84.24 percent for the existing buildings. The proposed additions to the Marvin Center include filling in the existing open courtyards facing H Street and 21st Street, and will result in an additional lot occupancy of 9.35 percent, for a new combined lot occupancy of 93.6 percent for Record Lot 60. Other than a canopy connection to the Marvin Center, no additions to the Adams Hall residence building are proposed in this application.

22. The total gross floor area of the additions is approximately 52,440 square feet, of which 21,200 square feet will be devoted to entrances and interior circulation space. The new construction will increase the lot occupancy from 68.4 percent (former lot 57) and 85.8 percent (former Lot 58) to 93.6 percent for the new lot.

23. The current floor area ratio for the campus is approximately 2.30. The project will add approximately 52,440 square feet of gross floor area, thereby increasing the floor area ratio for the campus to approximately 2.34.

24. The applicant testified that The Marvin Center is a multi-use facility which serves the academic, social, cultural and recreational needs of the University in a central location on the campus. The proposed expansion of the Marvin Center will enhance the Center's ability to serve those needs, will blend harmoniously with the existing building and surrounding land uses, and will continue to be unobjectionable to neighboring properties.

25. The applicant contended that the most efficient use of the student union building is to have all necessary services provided for in one single location.

26. The University stated its belief that the property is affected by an exceptional situation or condition in the design of the building and therefore believes that strict application of the lot occupancy regulations would serve only to exacerbate the condition and result in a practical difficulty. This difficulty would severely compromise the very purpose of the student union building, would not achieve the desired barrier free accessibility, and would result in a significant amount of expense and space reallocation.

27. The applicant contended that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, or integrity of the Zoning regulations in that the relief will decrease traffic, brighten H Street, improve the streetscape, and promote the efficient use of space.

28. Advisory Neighborhood Commission (ANC) 2A, by amended report dated January 5, 1994, and by written and oral testimony at the public hearing, opposed the project for the following reasons:

- A. The University has applied for only the lot occupancy variance for the project, and two variances are required. The additional variance required is from the prohibition of an addition to a nonconforming structure. In any event, the applicant is unable to meet the burden of proof for variances in this case.

- B. The applicant has not met the burden of proof for special exception relief for the roof structure.
- C. The BZA should not process the subject application or any other applications for individual University projects until the University begins construction of an adequate number of residence hall beds on campus within the period covered by the 1985 Campus Plan sufficient to remove the objectionable conditions created by the large number of students residing in the Foggy Bottom neighborhood outside the campus boundaries, as a result of the absence of on-campus residence hall construction.
- D. The balconies on the upper floors of the proposed addition to the Marvin Center extend 4.5 feet into the public air space on all three street frontages, without any proffered public benefit. Moreover, the balconies will constitute a safety hazard to pedestrians below, and the use of public air space requires approval by the Zoning Commission.
- E. The Board should deny the University's application because the proposed addition will create the following adverse impacts:
 - i. The building will be out of scale and character with the campus surroundings and will cause adverse impacts on neighboring properties.
 - ii. The addition will adversely impact the light, air and courtyard space of the neighboring properties.
 - iii. Objectionable traffic impacts will result, with increased pedestrian and vehicular traffic resulting from the new construction.
 - iv. Existing objectionable conditions include early morning food deliveries and trash pick-ups which generate noise in the alley, blocking of vehicles parked along the alley, fumes, rodents and odors.
 - v. Parking spaces behind the West End Apartments will be blocked. Construction noise will affect residents of the West End Apartments and others.

28. The board received several letters and a petition in opposition to the application. Additionally, the Board heard testimony in opposition to the application from residents in the vicinity of the subject site, including representatives of the West End Tenants Association. The opponents identified their concerns related to the existing Marvin Center operations including service deliveries, noise, traffic, rodents, safety concerns and the impact on their quality of life. They stated that the adverse impacts of existing operations at the Marvin Center would only be exacerbated

by the proposed additions.

29. In response to the above enumerated concerns, the University, in independent negotiations with ANC 2A, agreed to perform the following actions: work with its vendors to change the pick-up and delivery hours; exterminate the West End building, when written authorization is received from the tenants; comply strictly with the applicable noise ordinances during construction; provide free parking off-site for residents of the West End Apartment whose spaces may be inaccessible during construction; restore any significant damage or deterioration of the alley because of construction activity; keep the alley free of trash and debris resulting construction; and finally, acquire the proper public space permit for any construction activity which may take place in the public space.

FINDINGS OF FACT

The Board is required to give "great weight" to the written issues and concerns of the Advisory Neighborhood Commission. In response to the written issues and concerns of ANC 2A and based on the evidence of record the Board finds as follows:

A. INSUFFICIENT RELIEF REQUESTED: The Marvin Center is not a nonconforming structure, and therefore, a variance to allow an addition to a nonconforming structure is not applicable in this instance.

Upon the advice of Corporation Counsel, the Board reviewed this application both as special exception and variance relief.

B. NOT ENTITLED TO AREA VARIANCE FOR LOT OCCUPANCY: The public nature of the building requires more latitude in determining its uniqueness. This Board approved the Marvin Center in 1967 with a lot occupancy in excess of that permitted by the regulations at that time.

The Marvin Center is unique to the city, there is no other building like it in the City, and it is the combination of the complexity of the building (mixed uses, different constituencies), design of the building, prior zoning history, and its placement, when considered in totality, which create an exceptional situation and establish the building's uniqueness; which if applied strictly to the regulations will result in an exceptional practical difficulty.

Alternative options presented to the proposed plan were found to be contrary to the purpose of the renovation (to increase efficiency) and therefore serve only to contribute to the practical difficulty.

The relief, if granted, will not substantially impair the public good or the Zoning Regulations.

C. BURDEN OF PROOF FOR SPECIAL EXCEPTION FOR ROOF STRUCTURE NOT MET: Portions of the mechanical and elevator housing and the handicapped-accessible rooftop elevator, plus the two stair towers to the roof on the I Street side of the building, do not meet the strict setback requirements of the Zoning Regulations.

Full compliance with the roof structure setback provisions is impracticable because of operating difficulties, size of building lot, and other conditions relating to the building that would tend to make full compliance unduly restrictive, prohibitively costly, and unreasonable.

The shadow study provided by applicant was dispositive in showing no adverse impact on light and air will result from the roof structure.

The roof structure is necessary to provide for handicapped accessibility and will not adversely affect the neighborhood.

D. BZA SHOULD NOT PROCESS SUBJECT APPLICATION UNTIL THE APPLICANT BEGINS CONSTRUCTION OF RESIDENCE HALLS: There is another case pending before the Board, and this issue will be disposed of at that time.

However, The Board does find that the current uses of the Marvin Center and its proposed expansion are consistent with the approved Campus Plan Land Use designation of the site.

The total campus FAR will not exceed 3.5 as a result of this approval. The approved Campus Plan for the University designates the site in the "educational mixed-use" category. The Board finds that the use, height, bulk and design of the proposed addition are sensitive to and compatible with adjacent and nearby non-University owned property. The Board further finds that the project will not tend to adversely affect the use of adjacent and neighboring properties, and will not impair the intent, purpose and integrity of the R-5-D District regulations.

E. BALCONIES: The Board does not have the authority to regulate intrusion into public air space. Balconies and bays which extend no more than four feet into the public space are permitted as a matter of right under the Building Code. There has been no evidence to indicate that such projections would constitute a safety hazard, nor is there any requirement to proffer public benefits in exchange for approval of such projections. The record is clear, there is no unauthorized intrusion into public air space.

F. OBJECTIONABLE CONDITIONS: Objectionable conditions can be addressed by the Board by conditioning the approval of any special

exception. However, it is beyond this Board's jurisdiction to prohibit or restrict any applicant's use of the public rights-of-way for any purpose.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant, George Washington University, pursuant to 11 DCMR 3108.1 and 3107.2 is seeking a special exception under Section 210 for further processing of an approved campus plan, a special exception under Section 411 for a roof structure, and an area variance from the lot occupancy requirements (Subsection 403.2) to allow an addition to an existing University building containing a student center, offices, theater, dining room, and dormitory in an R-5-D District at premises 800 21st Street, N.W. and 2100 Eye Street, N.W. (Square 77, Lots 57 and 58).

The granting of a special exception requires a showing through substantial evidence that the application can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that the exception will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board concludes that the applicant has met the burden of proof for approval of special exceptions under Sections 210 and 411.

The Board concludes that the special conditions of BZA Order No. 14455, dated February 25, 1988 and amended on June 29, 1988, have been met.

The Board concludes that subject to compliance with conditions listed below, the facility will not have an adverse impact on the neighborhood because of traffic, noise, number of students, or other objectionable conditions.

The Board concludes that granting the application for the special exceptions is in harmony with the general purposes and intent of the Zoning Regulations and Map and will not tend to adversely affect the use of neighboring property.

The granting of an area variance for lot occupancy requires a showing through substantial evidence that a strict application of the Zoning Regulations would result in an exceptional practical difficulty upon the owner of the property. Furthermore, the variance relief requested can be granted only with a showing of no substantial detriment to the public good and no substantial impairment of the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

The Board concludes that the applicant has met the burden of proof for variance relief from the lot occupancy requirements of Subsection 403.2.

The Board concludes that granting the application will not be of substantial detriment to the public good, and will not substantially impair the intent, purpose, and integrity of the zone plan for the R-5-D District.

The Board concludes that it accorded the views of ANC 2A the "great weight" to which they are entitled.

In light of the foregoing, the Board **ORDERS** that this application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:


1. Construction shall be in accordance with the plans marked as Exhibit No. 38 of the record. The western wall of the addition over the theater shall be constructed of a light colored material to enhance reflected sunlight into the courtyard.
2. The application shall comply with all relevant D.C. licensing regulations and standards, particularly with respect to controlling the hours of construction, noise of construction activities, and use of public space.
3. Deliveries and pick-ups shall be limited to the hours of 7:00 a.m. to 8:00 p.m. Monday through Friday and 8:30 a.m. to 8:00 p.m. on Saturday and Sunday.
4. Trash shall be stored in a closed container screened from view. The applicant shall maintain the surrounding area free of refuse, debris and vermin.
5. The applicant shall prevent blockage of the parking spaces which serve the residents of the West End Apartment building and/or provide alternate parking arrangements on campus for those residents during the construction period.
6. The applicant shall provide the West End Tenants Association with the name, office, and telephone number of the appropriate contact person to be notified in case of vehicle blockage in the alley. Such information shall be updated as often as necessary to prevent its becoming outdated.

VOTE: 5-0 (John G. Parsons, Craig Ellis, George Evans, Laura M. Richards and Angel F. Clarens to grant).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. DOBBINS
Director

Final Date of Order: JAN 31 1997

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION NO. 15837

As Director of the Board of Zoning Adjustment, I certify and attest that on JAN 31 1997 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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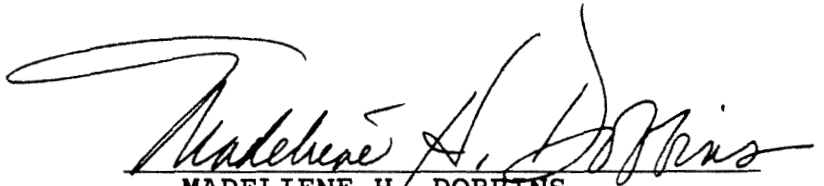
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MADELIENE H. DOBBINS
Director

DATE JAN 31 1997